

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:08-cr-116

- vs -

District Judge Walter Herbert Rice

Magistrate Judge Michael R. Merz

JEROME HILL,

Defendant.

:

ORDER DENYING PRE-MOTION APPOINTMENT OF COUNSEL

This case is before the Court on Motion of Defendant Jerome Hill for appointment of counsel (ECF No. 422).

Defendant advises that he has learned from the Public Defender's Office that they were reviewing his case in light of the holding in *Johnson v. United States*, 576 U.S. ___, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015), that the residual clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e)(1) is unconstitutionally vague. However, he says, the Federal Defender cannot represent him in an action under 28 U.S.C. § 2255 because of a conflict of interest in that that office represents a co-defendant in this case.

18 U.S.C. § 3006A and this Court's Criminal Justice Act Plan provide that a financially eligible person may be appointed counsel if he or she "is seeking relief under section 2241, 2254,

or 2255 of title 28.” The Court interprets the phrase “is seeking” to refer to a person who has actually filed a motion to vacate under 28 U.S.C. § 2255. In other words, Congress has not authorized appointment of counsel to advise a person whether or not to file under § 2255. Accordingly, the Motion is DENIED without prejudice to its renewal if Wright actually files a motion to vacate under § 2255.

November 24, 2015.

s/ *Michael R. Merz*
United States Magistrate Judge